



Insurance Department

State of Utah

GARY R. HERBERT
Governor
SPENCER J. COX
Lieutenant Governor
TODD E. KISER
Commissioner

Bail Bond Surety Oversight Board Meeting

(<https://insurance.utah.gov/licensee/other/bail-bond/board>)

Date: January 10, 2018

Time: Noon

Place: East Building, Copper Room

BOARD MEMBERS

xClay Carlos (Chair)	xDominic Sanone
xRyan Cooper (Co-Chair)	xTony Choate
xLt. Kati Booth	xCurt Oda
xStephen Aina	xBrett Barratt (Non-Voting)

DEPARTMENT STAFF

Todd Kiser, <i>Ins. Commissioner</i>	xSuzette Green-Wright, <i>MC Director</i>	xCathy Burton, <i>Examiner</i>
xPerri Babalis, <i>AG Counsel</i>	xHelen Frohlich, <i>AG Counsel</i>	xSteve Gooch, <i>PIO Recorder</i>

PUBLIC

Wayne M. Carlos	Vivian White	Dyon Flannery
Steve Brown	Gerald Conder	Ken Jones
Misty Albright	Christie Ellis	Gary Walton

MINUTES — Approved

- **General Session (Open to the Public)**
 - Welcome / Clay Carlos, Chair (12:03 pm)
 - Adoption of Minutes for October 11, 2017 meeting
 - **Motion by Curt to adopt minutes. Seconded by Kati. Motion passes 7-0.**
- **Executive Session - If Needed (Closed to the Public)**
- **General Session (Open to the Public)**
 - **Approve Recommended Actions from Executive Session** – Not needed
 - **Licensing Report for October through December** / Cathy
 - Cathy says it's a good idea for agencies to check monthly to make sure their agents' licenses are up to date. Agent Search on the UID website is a useful tool for looking up agents.
 - According to producer licensing, an agent can renew their license 70 days prior to the expiration date. The cost for renewal is \$50 plus processing. Clay asks if renewing early will change the expiration date. Cathy says no, it will stay as the last day of the birth month.
 - There weren't many reinstated licenses, but there were quite a few licenses that lapsed because they've decided they don't want to be in the bail industry. Agencies and agents should both have received a letter notifying them of the lapse.
 - Kati asks how often the website is updated with licensing information. Steve says it pulls data right out of Sircon, so it's automatically updated.

- Wayne Carlos asks, as a principal, if he decides he never wants to write a bond again, would he still have to have a license. Cathy says the qualifications require a designated agent with 2,000 hours, which is generally the principal, so yes.
- **Summary of Enforcement Reports / Cathy**
 - Enforcement / Cathy
 - Agency Audit Update / Cathy
 - Cathy finished 8 audits and has started 3 more.
 - Some audits find that the agency doesn't have any code violations. When she finishes an audit, she sends a synopsis of everything she looked at and what the results were. Some of the audits had violations that resulted in private letters, and some had forfeitures.
 - About 2 weeks prior to an audit, she sends a letter and request for information. The info is very basic and includes all current employees, active bonds and evidence of bonding ability, a sample check from the trust and operating accounts, a signature card from the trust and operating accounts, plus a year of bank statements for all accounts, a trust account ledger, a copy of the bonding agreement and filed forms, a copy of their marketing materials (Dex ads, billboards, etc.), results of independent audits, and bonding paperwork for 3 months so she can pick bonds and make sure they're correct.
 - Clay asks if the lack of recent enforcement cases is because the industry has shaped up. Cathy says she'd like to say that's true, but a lot of the problems that have occurred continue to occur. That's one of the reasons she reminds agencies of things and why she does audits. She's happy to answer questions and walk through issues if asked.
 - Clay notes that at the last meeting Cathy had reported that she needed to do 7 more audits, and asks if that means she's about to start over with audits for the industry. Cathy says yes. She has 3 more to do and will continue addressing agencies. It's a continuous round of audits.
 - Clay asks how long she would wait before doing a first audit on a new business. Cathy says about a year, since she asks for a year of bank records. By waiting a year, it establishes business practices and patterns. Brett asks what the time frame is for existing agencies. Cathy says it's 3-5 years. Kati asks if they're random checks. Cathy says she goes back to her list to see the last time they were audited. However, if there's concern about an agency, those will move to the front of the list and may be audited sooner.
 - Stephen asks what issue is the most prevalent issue that Cathy is seeing. She says one of her big concerns is trust money or collateral being held in the right account, and that it isn't commingling and being transferred back and forth. Correct records and ledgers saying when bonds were written and exonerated are important too. Sometimes money will stay in a trust account because people leave and there's no way to contact them — that money can't be transferred because it needs to stay in trust. Forms can be a big issue too. Surety insurers file forms for the company and the company needs to make sure they're using the same forms. Collateral backed companies need to file their own forms. Both types of company need to make sure all the information is correct according to rule and code.

- Clay asks if there's a standard time frame after which trust money is forfeited if a case is exonerated but the person is MIA. Cathy says there isn't anything in the code. Brett notes that at some point it escheats to the state. Perri doesn't know how many years it is, but thinks it's somewhere around 8 years. After that, the money needs to be turned over to Unclaimed Property in the Treasurer's Office.
- Curt asks if bail agents need annual documentation to the trust account and why money is still there. Cathy says the ledgers are the records. She often asks for clarification to make sure the required information is in the ledger.
- Wayne says before agencies do anything with the money, they need to check with judges to make sure the case is actually closed and the docket shows exonerated. Sometimes cases close but are reopened.
- Proposed Penalties for Board's Review: None
- **New Business**
 - Forfeiture judgments that can result in a mandatory order of suspension / Cathy
 - Cathy says get gets involved in forfeiture judgments after the prosecutor has issued the judgment and the notification letter has been sent out. The letter gives the agent 15 days to pay the forfeiture judgment, after which the judgment is sent to the UID if it's not paid.
 - The relevant code section is 31A-35-504.
 - When a prosecutor notifies Cathy of a failure to pay a forfeiture judgment, she opens an investigation and prepares a letter that includes the name of the prosecutor, the court, the defendant, the court case number, and an explanation of how 31A-35-504 was violated. The agency has 5 business days following the notification to satisfy the judgment, and the UID requires written notice from the prosecutor that the judgment is satisfied. The letter states the date on which a mandatory order of suspension will commence. Cathy calls the agency to alert them of the forfeiture judgment, then sends the letter via email and mail.
 - If the agency doesn't pay the forfeiture judgment within the required timeframe, the State code requires a mandatory order of suspension. The order is for no fewer than 14 days, and the courts and jails are notified of the suspension. During the 14-day suspension, Cathy checks to see if the debt has been paid. She also makes sure there aren't any other notices of unpaid judgment.
 - Sometimes when an agency gets a forfeiture judgment, it indicates trouble to the UID. In these cases, forfeiture judgments have piled up and they're in financial trouble.
 - If the agency fails to meet the conditions of the suspension, the Commissioner commences an administrative proceeding to revoke the license 60 days after the initial date.
 - Clay asks if there have been any revocations for failure to pay forfeiture judgments. Cathy says yes, twice in the last year. Clay asks if it's someone quitting the business or are they still working. Cathy says after a revocation, the courts age out the forfeiture judgments and send them to the Office of State Debt Collection. Under the law, the OSDC adds rates and fees and goes after the assets of the agency or principals. They're in the process right now of collecting on a few bail agencies and are trying to get their collaterally backed resources.

- Vivian White if you're willing to work with the court and are nice, they'll work with you. You can sometimes file a motion with the judge to make payment arrangements before your license is suspended.
- Gary Walton notes that an agency was suspended last week for failure to pay a judgment. He asks if the surety that underwrites them was also suspended. Cathy says the forfeiture judgment was taken prior to the agency being aligned with the surety. Gary says that's not possible because the agency has been surety backed for 4-5 years, ever since his divorce. Cathy says the UID is taking appropriate steps based on the forfeiture judgment.
- Curt asks what happens to the surety if it's surety backed. Cathy says under the code, the UID goes after the surety agency first. Generally, if you have a surety insurer, the agency contacts them to get the money to pay it. Curt notes that an agency could have trouble getting money from a surety if the surety is having financial difficulty, which would make it not the agency's fault. That's probably rare, but he could see it happening.
- Dominic says ultimately the surety is responsible. If they don't pay it, then they should be suspended in the state until they pay it.
- Cathy says the court will notify the surety and the agency at the time they file. The UID starts with the agency because that's where the prosecutor alerts the UID about the forfeiture judgment. Usually the surety pays it, but the agency's license may be suspended or revoked.
- Kati asks when she gets a call from the court, does she automatically open a case or is there a grace period. Cathy says she opens a case when she gets the packet from the court. The packet includes a letter from the prosecutor, a copy of the forfeiture judgment, a copy of the motion, and a copy of all the paperwork regarding the forfeiture judgment. When she sends the letter, she also sends a copy of the packet which means the agency gets everything twice.
- Agencies sometimes come to Cathy and tell her due process was skipped and they have questions. Cathy then contacts the courts and AG to see if there's a reason the process shouldn't go forward. Sometimes there are reasons, so the investigation is shut down and she notifies the prosecutor. It's rare and has only happened a few times in the past 5 years.
- Brett asks for confirmation that there is no grace period. Cathy says that's correct. Sometimes if she gets the packet at the end of the day, she'll get it ready and will submit it the next morning. Most of the time the agency acts ASAP after Cathy calls.
- Curt asks if there have been any issues with prosecutors not sending info about a judgment. Clay says yes. He had a forfeiture judgment that he was unaware of and the courts went straight to Cathy. Curt says he's asking because he knows that there are prosecutors that are hostile to the industry. Clay thinks there are probably forfeiture judgments out there that even Cathy doesn't know about. Tony said he had OSDC call him on a bond that hadn't even gone through Cathy. Clay says until recently, the courts didn't even know they could go through Cathy.
- Cathy will revisit the process with the court clerks because they have new people.
- Stephen asks Curt which prosecutors he knows who are hostile. Curt says he knows a couple, but won't name names. Stephen says there are diligent ones who give extra notice and time for bail. Curt says that's true, but the industry needs to watch out for

the crappy ones before they mess things up for everyone. He suggests getting Senator Adams involved.

- Cathy says there are times when she's gotten forfeiture judgments and notified the agency, but the agency says there are problems, so the prosecutor pulls the forfeiture back and will work with the agency. In her experience, they're very open and workable.
- Wayne says agencies need to check and double check because courts do make mistakes. It's not uncommon to be notified of a forfeiture. He expects that Cathy has probably received notice from the court even after the forfeiture has already been paid. Cathy says that has happened.
- Curt asks if the topic of hostile prosecutors needs to be revisited. Dominic says the process is more efficient now and it doesn't seem like an issue. Curt suggests keeping an eye on them. Clay notes that there are more favorable prosecutors out there than there are unfavorable.
- Cash-only bail / Clay
 - Cash-only bail was discussed in 2016 and was addressed in a bulletin. The UID's position is that bail bond licensees are not to do cash bail and can only do bail bonds. There was objection to the bulletin in the industry, but nothing else was ever said about it. Clay wants to know if anyone has been in trouble for it and what can be done to warn licensees about staying in compliance.
 - Perri says the bulletin is in effect and no statute changes have happened. The law hasn't changed.
 - Clay asks if agencies aren't able to do cash bail, what do they need to do as businessmen to continue to do cash bail. Should they open financial lending companies and switch hats during a transaction from lender to bondsman? Perri can't give legal advice and says it's a business decision. Clay asks if they're OK to open a second lending business and do cash bail with impunity. Perri says it's not the UID's position to answer that question. That's a question for the company's attorneys.
 - Perri notes that lending institutions aren't covered by the UID.
 - Wayne asks if an agent does a bond and is ready to kick the person, but later finds out they have a \$200 cash bail, can the agent act on their own behalf to give them the money as a person, not as a bail agent. Perri doesn't know. Kati asks if it would matter if they charged a fee. Tony says he thought they were told a licensed bail bond agent couldn't pay it regardless. Dominic says it's OK if you're acting as a courier delivering the money on behalf of the defendant or the family.
 - Perri says questions should be put in writing so the facts are clear.
 - Stephen tells about a problem with cash bail as an agency he has seen in court. Once the bond is refunded, the attorney for the agency tried to get the money to them. But the money can't be refunded to the agency because it's the property of the defendant. Kati says she's gotten different direction from the state auditor, and now has to record the names and information of people who bring the money, not the defendant.
 - Gary notes that the second paragraph says bail agencies "may only sell bail bonds, not other products or services." He says if he's licensed as a bail agent, he can't be a landlord or distribute Girl Scout cookies. Stephen says the bulletin says "in a criminal bail transaction," so Girl Scout cookies couldn't be sold during a criminal transaction.
- **Old Business**

- At the October meeting, Curt asked JL Webber for information that he was going to send to Cathy about Colorado's pretrial release program. Cathy says he didn't give it to her, so she will follow up with him to get it. Clay thinks it would be valuable. Curt would like to review it before the next meeting. Brett says that information should be emailed to the board as soon as she gets it.
- Brett says HB 39 (the UID's bill) has nothing about bail in it. The UID hasn't seen any bail bills and is only aware of one, which is a boxcar bill that has bail in the title, but the Department has no info about what's in it. Once it's out, it will be on the UID's site.
- Brett called Keisa Williams at the court administrator's office to see about updates. She didn't have any, but Brett knows that the pretrial release committee meets Jan. 11 at noon. Wayne may not be able to attend, but he's been in contact with Keisa to have someone else attend on his behalf. While they're not public meetings, there is a public process that people can go through to attend the meetings. They can attend but cannot speak.
- **Other Business**
- **Adjourned** (12:56 pm)
 - **Motion by Tony to adjourn. Seconded by Kati. Motion passes 7-0.**
 - **Next Meeting:** July 11, 2018 — Copper Room, East Building

2018 Meetings (Noon to 1:30pm)

Jan 10, 2018	Apr 11, 2018	July 11, 2018	Oct 10, 2018
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